

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN HARRIS, D99649,

Petitioner,

v.

WARDEN,

Respondent.

Case No. [18-cv-06387-CRB](#) (PR)

**ORDER DISMISSING PETITION
FOR A WRIT OF HABEAS
CORPUS FOR FAILURE TO
EXHAUST**

(ECF No. 6)

Petitioner, a state prisoner currently incarcerated at California State Prison, Sacramento, seeks a writ of habeas corpus under 28 U.S.C. § 2254 challenging the Contra Costa County Superior Court's recent denial of his petition for release pursuant to California Penal Code section 3051. He also seeks leave to proceed in forma pauperis (IFP) under 28 U.S.C. § 1915.

Prisoners in state custody who wish to challenge collaterally in federal habeas corpus proceedings either the fact or length of their confinement are first required to exhaust state judicial remedies, either on direct appeal or through collateral proceedings, by presenting the highest state court available with a fair opportunity to rule on the merits of each and every claim they seek to raise in federal court. See 28 U.S.C. § 2254(b)-(c). Petitioner has not done so. He has not presented the Supreme Court of California with an opportunity to consider and rule on his claims. See O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999) (state's highest court must be given opportunity to rule on claims even if review is discretionary); Larche v. Simons, 53 F.3d 1068, 1071-72 (9th Cir. 1995) (Supreme Court of California must be given at least one opportunity to review state prisoners' federal claims).

For the foregoing reasons, the petition for a writ of habeas corpus is **DISMISSED** without prejudice to petitioner filing a new petition after state judicial remedies are exhausted. But based

1 solely on petitioner's affidavit of poverty, his application for leave to proceed IFP (ECF No. 6) is
2 GRANTED.

3 The clerk is instructed to close the file and terminate all pending motions as moot.

4 **IT IS SO ORDERED.**

5 Dated: October 26, 2018



6 CHARLES R. BREYER
7 United States District Judge
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

MARVIN HARRIS,
Plaintiff,

v.

WARDEN,
Defendant.

Case No. 3:18-cv-06387-CRB

CERTIFICATE OF SERVICE


I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 26, 2018, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Marvin Harris ID: #D-99649
California State Prison-Sacramento
P.O. Box 290066, C2-102
Represa, CA 95671

Dated: October 26, 2018

Susan Y. Soong
Clerk, United States District Court

By: 
Lashanda Scott, Deputy Clerk to the
Honorable CHARLES R. BREYER